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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,615	09/29/2003	Claudio Bertone	86167-4C	6257

7590 05/21/2004

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EXAMINER	
JACYNA, J CASIMER	

ART UNIT	PAPER NUMBER
3751	

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/671,615	BERTONE, CLAUDIO	
	Examiner	Art Unit	
	J. Casimer Jacyna	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 September 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *19-53* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19-53* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. 09/629,449.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 19-53 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,419,120. Although the conflicting claims are not identical, they are not patentably distinct from each other because every element called for in application claim 19, i.e. the powder hopper, a water dispenser, a plurality of flavoring syrups, a mixing unit and a control unit, also appear in patent claim 1. However, patent claim 1 includes additional limitations for the elements, such as the addition of a motor driven auger for the powder hopper and the addition of a boiler for the water dispenser, wherein one of ordinary skill in the art would have considered it obvious that the specific details of the primary elements in patent claim 1, such as the auger and the boiler, could have been eliminated in order to achieve a broader claim coverage of the invention. Also, every element called for in application claim 48, i.e. receiving a beverage selection, supplying powder, supplying water, supplying one of a plurality of flavoring syrups, and mixing, also

appear in patent claim 21. However, patent claim 21 includes additional limitations such as the beverage being a hot drink, the syrup supplies being remotely located, and that the drink is produced within the body of a dispenser, wherein one of ordinary skill in the art would have considered it obvious that method steps such as further defining the type of beverage and specific details of the drink dispenser, could have been eliminated in order to achieve a broader claim coverage of the invention.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 48, 49, 51 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Ficken. Ficken discloses a beverage dispenser including a powder supply 16 or 22, a water supply 34, a flavoring supply 40 with 42 (note that sugar mixed with water constitutes a syrup and sugar substitute mixed with water constitutes a calorie free syrup), and a mixer 20.

6. Claims 19-24, 27-29 and 46-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruskin et al. in view of Ficken. Ruskin discloses a beverage dispenser including a powder supply 9, a water supply 7, a flavoring supply as is the milk supply 26, which passes through solenoid valve 31, a mixer 11, and a push button control on col. 1, lines 8-9, substantially as claimed but does not disclose a plurality of liquid flavoring syrup dispensers. However, Ficken teaches another beverage dispenser having a plurality of liquid flavoring dispensers 40 with 42 (note that sugar mixed with water constitutes a syrup and sugar substitute mixed with water constitutes a calorie free syrup) for the purpose of using the system to dispense additional varieties of beverage. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispenser of Ruskin with a plurality of syrup supplies as, for example, taught by Ficken in order to dispense additional varieties of beverage. In regard to claim 28, Ruskin does not disclose the use of a vacuum system. However, Ficken teaches the use of a vacuum blower 48 which draws air from mixing chamber 20 via conduit 46 for the purpose of assisting in the dispensing of the supply powder from the supply hopper into the mixing bowl. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispenser of Ruskin with a vacuum system as, for example, taught by Ficken in order to assist in the dispensing of the supply powder from the supply hopper into the mixing bowl.

7. Claims 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruskin et al. in view of Ficken as applied to claim 1 above, and further

in.view of Struminski et al. Ruskin discloses a beverage dispenser including a powder supply 9, a water supply 7, a flavoring supply as is the milk supply 26, and a mixer 11, substantially as claimed but does not disclose a level control for the powder supply hopper. However, Struminski teaches another powdered beverage dispenser having a level control 60 for the powder hopper for the purpose of informing a user when the powder supply needs replenishing. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispenser of Ruskin with a powder hopper level control sensor as, for example, taught by Struminski in order to inform a user when the powder supply needs replenishing.

8. Claims 25, 26, 36-45 and 52 would be allowable if the double-patenting rejection is overcome and if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 703-308-1508. The examiner can normally be reached on Tue. thru Thu. 9AM-8PM, Fri. 7AM-1PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

J. Casimer Jacyna
Primary Examiner
Art Unit 3751

JCJ